IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 649 of 2002

WITH

CIVIL APPLICATION NO. 803 of 2002

M/s.Raj Publicity .. Appellant

versus

Municipal Corporation of Gr.Mumbai

& Anr. .. Respondents

...

Mr.Navin Parikh with Ms.Hetal Patel for the appellants.

Mr.A.Y. Sakhare, Sr. Counsel with Ms.Geeta Jogalekar for respondent no.1.

Mrs.Geeta Mulekar, G.P. for respondent no.2.

CORAM : B.H. MARLAPALLE,J

JUDGEMENT RESERVED : 4th October 2005

JUDGEMENT PRONOUNCED :

P.C.:

1. This appeal arises from the order dated 8th July 2002 passed by the learned Judge of the City Civil Court of Bombay dismissing the Notice of Motion No. 1348 of 2000 filed in L.C. Suit no.6308 of 2000.

2. In L.C. Suit no.6308 of 2000, the appellant plaintiff has challenged the notice dated 26th September 2002 issued by the respondent Corporation calling upon the plaintiff to remove the hoardings put up in "V" shape and visible from both the sides in Nandadeep Garden, Bandra (East). There is no dispute that the plaintiff had approached the Corporation vide its proposal dated 18th March 1994 to develop Nandadeep garden and in turn seeking sanction to put up three advertisement hoardings 16′ x 20′ free of charge. The Corporation in turn by its letter dated 26th October 1994 accepted the proposal for development and maintenance of Nandadeep Garden and also inform its no objection in the plaintiff displaying "V"

shape hoarding of 40’ x 20’ facing Bandra as well as Santacruz in the said garden. It was further informed that the contract will be initially for a period of five years from the date of display of the structure and/or Boards whichever is earlier. The plot was handed over by the Corporation to the plaintiff and the hoarding was displayed on or about 30th January 1995. The said plot though belongs to the Road Development Division No.IV of the Government of Maharashtra, it was handed over to the respondent Corporation for development and maintenance of the garden and it has been in the possession of the Corporation for more 30 years. Soon after the hoarding was displayed, the plaintiff received a notice from the Executive Engineer, Road Development Division No.IV, Andheri, calling upon the plaintiff to shift the hoarding beyond 40 meters from the edge of carriage way of Western express highway. The plaintiff therefore, filed suit no.371 of 1995 against the said action of the Executive Engineer and without impleading the present respondent corporation. The suit was decided in terms of the minutes of order dated 20th April 1995 and the hoarding location was agreed to be shifted beyond 125 feet from the edge of

carriage way of Eastern Express highway. The hoarding was accordingly shifted.

3. By the notice dated 26th September 2000, the respondent Corporation informed the plaintiff that the permission to display the hoarding is valid for the period of five years from the date of its display i.e. 30th January 1995 and as the said period had already expired, the said hoarding was required to be removed within 7 days from the receipt of the notice. This notice came to be challenged in L.C. Suit No.6308/2000. By an order dated 21st September 2001, ad-interim order was passed in Notice of Motion no.1348 of 2000 and the same was challenged by the respondent corporation before this court in Appeal from Order No.1082 of 2001. The said appeal came to be decided by this Court on 31st January 2002 by consent of the parties. The plaintiff was directed to implead the Road Development Division which was subsequently called as the Highway Authority of the State of Maharashtra as defendant no.2 and the Notice of Motion was directed to be disposed of within four weeks after the Highway Authority was impleaded as a party defendant. The ad-interim order dated 21st

September 2001 was quashed and set aside and the parties were directed to maintain status quo until the disposal of the Notice of Motion. Consequently, the hoarding remained as it is and even after the impugned order was passed dismissing the Notice of Motion, the said hoarding continues to be as it is perhaps on account of understanding between the learned counsel for the respective parties.

4. The learned counsel for the plaintiff submitted that the plot of land on which Nandadeep Garden has been developed by it and by incurring considerable investment belongs to the Highway Authority of the State of Maharashtra and therefore, it is not within the purview of the respondent corporation to issue the notice of termination. It is further alleged that the notice of termination has been issued on instigations or at the instance of its competitors and in collusion with some Officers of the Corporation. In addition, it is also submitted that the period of five years to retain the hoarding is an illegal claim made by the Corporation and the hoarding cannot be sought to be removed on the same ground

viz. the expiry of the period of five years. On the issue of the plaintiffs right to retain the hoarding, it has been urged that the plaintiff has invested fairly large amount and developed the garden. Its investment cannot be allowed to be utilised by competitors who will pay more consideration/licence fee and the plea of the corporation that the plaintiff failed to maintain the garden properly was sought to be challenged. Though it is admitted that the plot of land on which Nandadeep garden is standing has been handed over to the Corporation, it is contended that it has no role to play on the issue of displaying hoarding on the said plot of land as the land is owned by the Highway Authority.

5. The learned Sr. Counsel for the respondent Corporation referred to the affidavit in reply filed by the Corporation as well as the added defendant viz. the Highway Authority and submitted that once the plot was handed over by the said authority to the Corporation, more than 30 years ago, the Corporation is the only body to decide on the issue of displaying hoardings in the said garden premises. The added defendant has no role

to play in this regard and the sole authority lies with the Corporation. These contentions of the Corporation have been supported by the Highway Authority in its written statement filed before the trial Court. It has also been pointed out that consequent to the judgement rendered by the Division Bench of this Court in Writ Petition no.233 of 1998, the Corporation has framed its policy for granting permission to display the advertisement hoardings and it has been following the said procedure meticulously as stated by the learned Sr. Counsel. The impugned notice does not in any way breach the policy framed by the Corporation. The learned Sr.Counsel in addition placed reliance on the order passed by the Apex Court in the case of MCD Vs. Delhi Outdoor Advertisers Association and Ors. reported in (1997) 11 SCC 241 and more particularly the following observations :-

> "We think that the learned counsel for the MCD is on a firm ground so far as this contention is concerned because once the period of the contract comes to an end by efflux of time the right

> to advertise ceases and the hoardings ought to be removed and there is no question of the removal being prceeded by a show-cause notice."

6. In the instant case, admittedly, it was the plaintiff who approached the respondent corporation vide its letter dated 18th March 1994 and the though it proposed a minimum period of 7 years as duration to display the hoardings, the Corporation by its communication dated 26th October 1994 had fixed the initial period of contract at 5 years. At no point of time, this decision was challenged by the plaintiff before the impugned notice was issued. The contract period of five years with reference to 30th January 1995 has already expired on 29th January 2000. The respondent Corporation is a public body and it is entitled to invite competitive proposals by issuing tenders so as to offer contracts for display of hoardings in Nandadeep garden and other premises. When the minutes of consent terms were drawn on 20th April 1995 and S.C.Suit no. 731 of 1995 was disposed in

terms of the minutes of the order, the respondent corporation was not impleaded as a party and it was not aware about any such agreed arrangement between the plaintiff and the Highway Authority. In any case, the Highway Authority has supported the stand of the respondent corporation that it is the provogative of the corporation to decide the period of contract for display of hoardings and consequently to issue the termination orders in that regard. The location of the hoarding consequent to the order dated 20th April 1995 disposing of the earlier suit has no bearing on the notice of termination dated 26th September 2000 issued by the Corporation. Even other reasons mentioned in the said notice need not be considered as one of the facts for deciding a prima facie case in favour of the plaintiff, save and except the reason of contract period having been expired. The termination notice therefore cannot be faulted with atleast for prima facie considerations.

. It is also pertinent to note that inspite of the impugned order having been passed on 8th July 2002, the plaintiff has continued to utilise the hoarding structure for its commercial purposes

during the pendency of this appeal and by developing the garden no irrevocable right to display the advertisement in perpetuity has accrued in favour of the plaintiff, in as much as the contract for five years was granted on the sole consideration that the plaintiff will develop and maintain the garden. The learned Judge of the trial Court has considered all the relevant aspects and set out cogent reasons to hold that there was no prima facie case made out to grant an injunction against the notice of termination dated 26th September 2000. The challenge to the said order is therefore, devoid of merits and this appeal must fail.

7. Hence, appeal is hereby dismissed in limine. Civil Application does not survive.

B.H.MARLAPALLE, J